

Cheltenham Borough Council

Council – 11 October 2010

Regulation of Lap Dancing & Other Sexual Entertainment Venues

Accountable member	Councillor Klara Sudbury, Cabinet Member for Housing and Safety
Accountable officer	Rob Bell, Assistant Director of Operations
Accountable scrutiny committee	Social & Community Overview and Scrutiny Committee
Ward(s) affected	All
Executive summary	<p>The Council are asked to consider the adoption of the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which have been amended by virtue of Section 27 of the Policing and Crime Act 2009. The amended provisions introduce an adoptive Licensing regime for “sexual entertainment venues”. Adoption of the above will enable the Council to properly regulate this type of entertainment in the public interest.</p>
Recommendations	<ol style="list-style-type: none">1. That Council RESOLVE to adopt the amended provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 with effect from 1st December 2010.2. That Council RESOLVE to delegate authority to the Assistant Director of Operations to carry out the necessary advertising requirements to comply with section 2 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).3. That Council RESOLVE to delegate the power to grant, renew, vary or transfer licences under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) to the Licensing Committee and/or Officers in line with any Policy subsequently adopted by the Licensing Committee.4. That Council RESOLVE that the draft Sexual Entertainment Venue Policy Statement be approved for the purposes of consultation.
Financial implications	<p>There are no financial implications arising from this report.</p> <p>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125</p>

Legal implications	<p>Paragraph 2 of Schedule 3 of the Policing and Crime Act 2009 states that where resolutions are in force under section 2 of the Local Government (Miscellaneous Provisions) Act 1982 the new provisions will only apply if a local authority resolves to adopt the amended provisions.</p> <p>If Council resolves to adopt the amended provisions a statutory notification process will be undertaken.</p> <p>Contact officer: Sarah Farooqi, sarah.farooqi@tewkesbury.gov.uk, 01684 27 2693</p>
HR implications (including learning and organisational development)	<p>No direct HR implications arising from this report.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</p>
Key risks	<ol style="list-style-type: none"> 1. There is a risk that the Council will not be able to effectively regulate this type of establishment. 2. There is a risk that the Council will not efficiently carry out its licensing functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
Corporate and community plan Implications	<ol style="list-style-type: none"> 1. Encouraging a safe and attractive day and night-time environment 2. Empowering communities, community groups and voluntary sector

1. Background

- 1.1** On the 30th of July 2010 the Licensing Committee resolved to recommend to Full Council the adoption of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3, which were amended by virtue of Section 27 of the Policing and Crime Act 2009. The Licensing Committee further resolved to recommend to Full Council to delegate authority to the Assistant Director Operations to carry out the necessary advertising requirements to comply with section 2 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009. Finally, the Licensing Committee resolved to recommend to Full Council a consultation process for the draft Sexual Entertainment Venue Policy Statement.
- 1.2** Council is asked to consider the adoption of the amended provisions of the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3, which were amended by virtue of Section 27 of the Policing and Crime Act 2009. These amended provisions introduce an adoptive regulatory regime for controlling “sexual entertainment venues”.
- 1.3** The Local Government (Miscellaneous Provisions) Act 1982 allowed for the licensing of sex establishments (sex shops and sex cinemas) by local authorities. Cheltenham Borough Council adopted Schedule 3 of the Act and made such a resolution on 25th April 1983 with full delegated powers being given to the Licensing Committee to perform this function. Currently Cheltenham Borough Council has licensed one sex shop premises in line with its policy.
- 1.4** The Act did not regulate adult entertainment as this could be regulated by the requirement for a Public Entertainment Licence, also empowered under the Act and adopted at the time by Cheltenham Borough Council.
- 1.5** The Licensing Act 2003 introduced Premises Licences and Club Premises Certificates that superseded the Public Entertainment Licences and are only capable of regulating ‘adult entertainment’ by means of compliance with the Licensing Objectives.
- 1.6** Under the Licensing Act 2003, there is one premise within the Borough which currently regularly has lap dancing and adult entertainment and is tightly controlled with conditions attached to its licence.
- 1.7** There are two other premises licences issued within the borough which permit “adult entertainment” but have not taken advantage of that permission.

Regulation of Lap Dancing and other “Sexual Entertainment Venues”

- 1.8** Lap dancing/pole dancing and adult style entertainment premises currently requires a Premises Licence or Club Premises Certificate under Section 1 of the Licensing Act 2003. No special provisions are made in the 2003 Act for these types of venues. If an application is submitted to the licensing authority for a Premises Licence or Club Premises Certificate the authority must grant the licence subject to certain mandatory conditions.
- 1.9** If relevant representations are made by an interested party (e.g. residents or local businesses) or a responsible authority (e.g. the police or fire service in the area) then the authority can, following a hearing, impose other conditions or reject the application. Even then, it will only be able to do so where such a step is necessary to promote one of the four licensing objectives set out in the Act, which are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 1.10** Section 27 of the Policing and Crime Act 2009 amends Schedule 3 Local Government

(Miscellaneous Provisions) 1982 to allow the Licensing Authority to regulate “sexual entertainment venues”, where “relevant entertainment” is provided before a live audience for the financial gain of the organiser or the entertainer. “Relevant entertainment” means “any live performance or any live display of nudity” i.e. striptease, lap dancing etc. (See **Appendix A**)

- 1.11 It is considered that, by virtue of the above allowance, the amendment does not seek to prohibit all adult entertainment but it does give local authorities the opportunity to regulate those venues that wish to provide such entertainment to a significant degree by way of requiring them to obtain a sexual entertainment venue licence.
- 1.12 The amendment that have been made allow for a limited provision of relevant entertainment, provided that certain limits are not exceeded i.e. There have not been more that eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of twelve months
- 1.13 The new legislative controls available to the Licensing Authority would strengthen the role that local communities can play in deciding whether a lap dancing premises is inappropriate for the locality. The Licensing Act 2003 has empowered local residents in general terms, but it is hard to make an effective objection against an adult entertainment venue unless its operation can be shown to be undermining one of the four licensing objectives.
- 1.14 The aim is to bring the licensing of lap-dancing premises in line with other “sex establishments” such as “sex shops” and “sex cinemas” and to recognise that local people have legitimate concerns about where such premises are located.
- 1.15 As is mentioned above, Cheltenham Borough Council has already adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in relation to the regulation of “sex shops” and “sex cinemas.”
- 1.16 Section 27 and Schedule 3 of the Policing and Crime Act 2009 require the Council to pass a separate resolution to adopt the amended provisions in order for the Authority to be able to also regulate “sexual entertainment venues” such as lap dancing/pole dancing clubs.
- 1.17 If the amended provisions are adopted, the Licensing Authority would be able to apply prescribed standard conditions on grounds not covered by the Licensing Act 2003 e.g. location, hours, display of adverts, visibility of interior. The Authority would also be able to produce a Policy setting out how they will consider applications for sexual entertainment venue licences.
- 1.18 It is also felt that failing to adopt the amended provisions and maintain the status quo would allow prospective sexual entertainment venues to take advantage of a perceived loophole in the Licensing Act 2003.

Transitional Arrangements

- 1.19 If the Council does resolve to adopt the amended provisions, the adoption of the provisions would need to be advertised in accordance with the requirements of Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The Government has decided that the following transitional arrangements will apply:-
- 1.20 The transitional period will last for 12 months starting from the date that the amended provisions come into force within the Borough. This will be the date specified in the adoption resolution and will be known as the “1st appointed day.”
- 1.21 Six months after the “1st appointed day” will be known as the “2nd appointed day”.
- 1.22 Between the 1st appointed day and the 2nd appointed day applicants (both existing operators and new applicants) will be able to submit applications to be considered by the Authority. At the

end of this period, the Authority must consider all applications received within this period and must not grant any licences until all the applications have been considered. Applications received after the 2nd appointed day would be considered individually.

- 1.23 Licences granted to new applicants would take effect immediately while those granted to existing operators would take effect on the “3rd appointed day” which would be six months after the “2nd appointed day”, or, if longer, when their application is determined.
- 1.24 Existing operators who do not apply or are not granted a sex establishment licence would be able to provide relevant entertainment under the terms of their premises licence or club premises certificate until the 3rd appointed day.
- 1.25 An example of how the transitional arrangements would work is shown at **Appendix B**.

2. Reasons for recommendations

- 2.1 So that the Council can properly regulate this type of establishment in the public interest.
- 2.2 So that the Council can efficiently carry out its licensing functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

3. Alternative options considered

- 3.1 To not adopt the amended provisions and to continue to use only the Licensing Act 2003 to regulate this type of establishment. This is not considered desirable as the Licensing Act 2003 does not provide the community with as strong a role in determining where it is appropriate to allow such establishments as the amended provisions of the Local Government (Miscellaneous Provisions) Act 1982 would.

4. Consultation and feedback

- 4.1 Initial consultation with Gloucestershire Constabulary has taken place on the adoption of the legislation and the policy statement. The Constabulary’s comments are attached at **Appendix C**.
- 4.2 If Full Council resolve to adopt the legislation, delegate authority to the Assitant Director of Operations & approve the draft Sexual Entertainment Venue Policy Statement for consultation, a consultation will have to undertaken in respect of the policy statement at **Appendix D**.
- 4.3 Should the Council resolve not to adopt the amended provisions, then a full consultation exercise must be carried out in twelve months time from the date the legislation came into force to consider adoption then, in accordance with Paragraph 4 of Schedule 3 of the Policing and Crime Act 2009.

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Appendices	A – Definitions under s 27 of the Policing and Crime Act 2009 B - Transitional Arrangements C - Gloucestershire Constabulary Response D - Sexual Entertainment Venue Policy Statement

Background information	<ol style="list-style-type: none">1. Policing and Crime Act 20092. Local Government (Miscellaneous Provisions) Act 19823. Licensing Act 2003
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Council Report risk template

The risk		Original risk score (impact x likelihood)				Managing risk					
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	Any risks associated with equality impact			0	0	0					
	Any environmental risks			0	0	0					
	If the Council does not adopt the amended provisions then it will not be able to effectively regulate this type of establishment.	Senior Licensing Officer	October 2010	2	5	10	Regulation	Adopting the relevant legislation	TBC	Senior Licensing Officer	
	If the Council does not adopt the amended provisions it will have limited powers to prescribe where this type of establishment can operate & no power to prescribe the maximum number permitted to operate in the borough.	Senior Licensing Officer	October 2010	2	5	10	Regulation	Adopting the relevant legislation	TBC	Senior Licensing Officer	
	If the Council does not adopt the amended provisions there is a risk of continued criminal activity associated with this type of establishment.	Senior Licensing Officer	October 2010	2	5	10	Regulation	Adopting the relevant legislation	TBC	Senior Licensing Officer	